



JENNIFER M. GRANHOLM  
GOVERNOR

STATE OF MICHIGAN  
OFFICE OF THE GOVERNOR  
LANSING

JOHN D. CHERRY,  
LT. GOVERNOR

January 30, 2008

The Honorable Andy Dillon  
Speaker  
Michigan House of Representatives  
H-166 State Capitol  
Lansing, Michigan 48909-7514

The Honorable Mike Bishop  
Senate Majority Leader  
Michigan Senate  
S-106 State Capitol  
Lansing, Michigan 48909-7536

Dear Speaker Dillon and Majority Leader Bishop:

I am writing to seek your bipartisan support for rapid enactment of amendments to the Michigan Vehicle Code to address significant concerns raised by Michigan businesses and foreign governments regarding an opinion issued by Attorney General Cox on December 27, 2007. In that opinion, the Attorney General determined that only permanent residents may obtain a driver's license in Michigan and that individuals living here legally, but on a temporary basis, must be denied a license. Resulting changes in policy subsequently implemented by the Secretary of State on January 22<sup>nd</sup> now require first-time applicants for a Michigan driver's license or identification card to prove they have established a permanent legal residence in Michigan.

Unfortunately, this change is causing severe disruptions for many Michigan job providers and their employees who are legally in the United States but not permanent residents. Many businesses and foreign government representatives have contacted my office to express their dismay. The Michigan Economic Development Corporation reports that this issue already is detrimentally impacting our state's ability to attract and retain foreign investment and skilled workers. There are currently nearly 400,000 foreign businesspeople, students, and their families in Michigan on visas, many employed in the automotive industry and other important sectors. To conduct business and live their lives effectively, they need to be able to legally drive in Michigan. While we should prevent persons in our country illegally from obtaining a driver's license, it is important that the law be changed quickly to address this problem.

Working together, I am confident that there will be broad bipartisan support for a fix focused on restoring the ability of all legal residents to obtain drivers' licenses and identification cards. I am therefore directing members of my

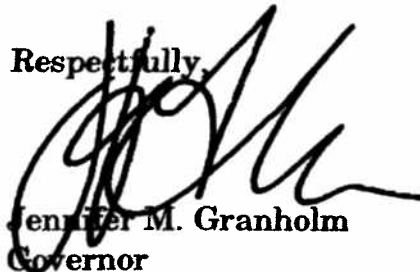
Letter to Speaker Dillon and Majority Leader Bishop  
January 30, 2008  
Page 2 of 2

administration to work with you, the Secretary of State, and the business community to assure that the appropriate amendments to the Michigan Vehicle Code are identified and enacted. I also remain supportive of Secretary Land's effort to authorize an optional enhanced driver's license that will allow Michigan residents to visit Canada without a passport. But given the need to act quickly on fixing the current problem, I am not certain that we can quickly achieve bipartisan consensus on legislation that also includes provisions to implement the federal REAL ID Act.

While I remain committed to working with you and the Secretary of State on the complicated issues surrounding implementation of REAL ID in Michigan, I believe it is important that we instead focus on the specific problems currently facing temporary residents first. Lengthy federal regulations necessary to implement REAL ID were only recently and belatedly released by the Bush Administration. States are currently receiving extensions to delay implementation until December 31, 2009. Furthermore, implementation of REAL ID means significant new costs, logistical hurdles, and time commitments for Michigan businesses, employees, and state government. If we instead focus first on restoring the ability of all legal residents to secure Michigan drivers' licenses and identification cards in a timely fashion, I am confident that we will have laid the foundation for a subsequent bipartisan effort to address issues surrounding federal mandates under the REAL ID Act.

Let's join together across the aisle, act quickly, and demonstrate to Michigan job providers and taxpayers our ability to do the right thing by focusing our efforts on allowing temporary legal residents to again obtain drivers' licenses and identification cards in Michigan. Thank you for your attention to this important matter.

Respectfully,



Jennifer M. Granholm  
Governor

c: The Honorable Mark Schauer, Senate Minority Leader  
The Honorable Craig DeRoche, House Minority Leader  
Tim Hughes

January 27, 2008

**Ms. Colleen Manaher**  
**Western Hemisphere Travel Initiative Office**  
**Department of Homeland Security**  
**(202) 344-3003 (202) 344-1435 [fax]**

Dear Ms. Manaher:

I am in receipt of the DHS PIA entitled "Use of Radio Frequency Identification (RFID) Technology for Border Crossings", dated 1/22/2008. I have some follow up questions regarding both this document and RFID enabled programs as a whole. Some of these questions pertain directly to the program this document serves as a PIA for. Other questions relate to the EDL program, for which DHS has not issued a PIA for at this time. In general, I have concerns that states are not being given the flexibility or options to develop pilot EDL license programs that do not use RFID or that choose to request a more secure form of RFID technology. This is an especially appropriate question since numerous DHS documents have pointed out that wireless chip technology is being considered due to its ability to efficiently track and route citizens at border crossings, and not for security reasons.

Overall, I am very interested in receiving clarification and answers to the following:

- 1) Could DHS please provide me with written correspondence confirming that it will not allow Michigan to develop an EDL pilot program that does not contain RFID, nor an EDL that contains a more secure form of RFID technology (for example, the proximity read RFID that the federal passport system uses that also allows for Basic Access Control (BAC)).
- 2) Page 17 states that the "[WHTI] will also restrict the manner in which such information may be presented". Can you explain if that is a reference to the data having to be presented via RFID, or what else this statement pertains to?

Page 17 states that after full implementation of WHTI that a US citizen would be able to reenter the United States without a travel document that contains RFID. However, this seems counter to most other statements in the PIA. Could you please clarify and give an example of what would be an acceptable border crossing document that could be still used to gain reentry into the United States after WHTI has been fully implemented that does NOT contain RFID?

- 4) Page 17 alludes to the fact that border travel lanes will be segregated into two types, for those people who have vicinity read RFID travel documents and those that don't. Considering that federal passports use proximity read RFID with BAC, should Michigan assume that even those with federal passports would have to use the "slower lanes"? Does this mean that there will be pressure for

Michigan residents who already have a federal passport to also get an EDL if they wish to participate in the “faster lanes”?

Furthermore, while I am pleased to see that DHS has chosen to use RFID in a manner that only transmit a unique identifier as part of a pointer system (as opposed to directly transmitting PII), I also feel that this program has taken a significant step backwards by not employing traditional BAC, making it far more vulnerable to interception and eavesdropping, which allows for both tracking and cloning.

- 5) Page 6 discusses the security risk of cloning, which is exacerbated by the lack of a basic “on/off” control device for RFID such as BAC. To mitigate this risk, the PIA discusses how a “tag identifier” (page 24) number sequence has been added to the unique identifier that is sent via RFID. The security experts I have consulted with are confused as to how this truly solves the cloning problem, as it is their understanding that if the unique identifier is obtained via skimming or eavesdropping that this tag identifier would be intercepted as well and incorporated into any reproduced cloned chip. Could you expand on how a “tag identifier” can effectively take the place of absent Basic Access Control (BAC)? This is an especially important issue because Gen 2 vicinity read chips can be read by any Gen 2 reader at distances of over 30 feet, even by common portable devices located outside of border control areas.

DHS has acknowledged this risk, and advises current applicants for trusted traveler RFID cards to “only carry the cards when traveling [to cross the border]”. This is admittedly difficult in the case of an Enhanced Drivers License, and it would be impossible for Michigan to offer its citizens this same protective advice. Other DHS advisories warn applicants to “use the supplied protective shields to prevent skimming at all other times”. However, this would also be impossible in the case of EDLs, and “protective sleeves” could NOT take the place of BAC. Michigan citizens must show their driver’s licenses frequently, sometimes many times a day, for things such as checking out a book at the library, visiting a doctor’s office, renting a video, purchasing alcohol/cigarettes, voting, writing a check, shopping at Sam’s Club, getting a fishing license, purchasing certain medications, or using a credit card. These are all instances where the card would have to be removed from its protective sleeve and would allow for skimming or eavesdropping. We currently have problems with the unintended secondary uses of driver’s licenses by commercial entities, even when a citizen has to consciously choose to hand over their license. Without BAC, Michigan’s citizens would have no way of knowing if their unique identifier had been intercepted when presenting their license for these other purposes, and if commercial entities were then using that number for data aggregation, data sharing, in store tracking, or marketing purposes.

- 6) If citizens suspected their unique number had been compromised, I have been unable to find sections in the regulations that deal with whether a person is able to then apply for a new card with a new unique RFID identifier number, and if so, who would pay for correcting an assumed or real breach of data. Without this ability, a person would have to continue to use a breached card for a period of up

to 5-10 years under current rules. Just as there is a market for illicitly obtained social security numbers, I am concerned that insecure RFID would allow for accelerated markets in clean RFID numbers used in cloning rings. This would quickly lead to the use of biometric data that is more intrusive than simple photographs.

It is also worth noting that any citizen who forgets to put a vicinity read EDL into its protective sleeve will be vulnerable to the virtual pick-pocketing of their unique identifier number through a simple hand held scanner. BAC with proximity read RFID would help prevent this risk. Not using RFID in a travel document at all would certainly accomplish this as well.

Additional questions:

- 7) Page 21 indicates that “the governments of Canada and Mexico have access to portions of the trusted traveler program information”. I am assuming this would be the case with EDLs as well. Could you please provide specifics as to exactly what kinds of data these foreign governments will have access to, and which, if any, they would specifically not have access to under an EDL?
- 8) If DHS determines that their back end computer system has been hacked or breached, will it be necessary to reissue all RFID enabled state EDLs in order to get new chips/ unique identification numbers? Will it be the federal government or the state government that would be financially responsible for any such reissues?
- 9) There may be cases where the federal government chooses to confiscate a passport, but would not become involved with a state level document. In the case of a merged document such as an EDL, would the citizen retain the EDL but have its passport ability removed? Or would the entire document be confiscated, leaving the citizen temporarily without a driver’s license? Regardless of the document being issued by Michigan officials, would an EDL ultimately be legally considered as a federal or state document?

Michigan is considering participating in an EDL pilot program, and a full understanding of the program will be critical in helping us to make proper legislative decisions. I would also like to use this letter as an opportunity to express the importance of flexibility in this DHS pilot program, flexibility that would allow the technology of an EDL to partially vary from one state to the next, especially considering that the EDL is being operated under pilot programs that should help to determine both acceptable options and best practices. This is especially the case if Michigan were to adopt the proximity read and BAC standards of federal passports, or opt out of RFID entirely, as it would not affect reader technology at border crossings in any way.

For an EDL to help ameliorate border crossing problems presented by WHTI and other federal laws, it will have to gain wide acceptance to be successful. Allowing Michigan to choose more trusted technology options will help us with that goal, as will your assistance in lowering costs and enhancing access for the traditional passport system. I thank you for your time and look forward to hearing from you.

Respectfully in service,

Paul Opsommer  
State Representative, 93<sup>rd</sup> District

cc: Honorable Jennifer Granholm  
Governor of Michigan

Honorable Judson Gilbert  
Majority Chair, Senate Transportation Committee

Honorable Roger Kahn,  
Majority Vice-Chair, Senate Transportation Committee

Honorable Raymond Basham  
Minority Vice-Chair, Senate Transportation Committee

Honorable Cameron Brown  
Majority Chair, Senate Homeland Security Committee

Honorable Valde Garcia  
Majority Vice-Chair, Senate Homeland Security Committee

Honorable Tupac Hunter  
Minority Vice-Chair, Senate Homeland Security Committee

Honorable Hoon-Yung Hopgood  
Majority Chair, House Transportation Committee

Honorable Martin Griffin  
Majority Vice-Chair, House Transportation Committee

Honorable Phillip Lajoy  
Minority Vice-Chair, House Transportation Committee

Honorable Ed Clemente  
Majority Chair, New Economy and Quality of Life Committee

Honorable Gabe Leland  
Majority Vice-Chair, New Economy and Quality of Life Committee

Honorable Bill Huizenga  
Minority Vice-Chair, New Economy and Quality of Life Committee



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January 30, 2008

The Honorable Michael A. Cox  
Attorney General  
Michigan Department of Attorney General  
P.O. Box 30212  
Lansing, Michigan 48909

Dear Attorney General Cox:

I am writing to bring to your attention a situation that is occurring as a result of Attorney General Opinion No. 7210 that you issued on December 27, 2007. In the opinion, you concluded that only a permanent resident is eligible to receive a driver's license in Michigan. Unfortunately, given the breadth of this conclusion, your opinion has resulted in Michigan driver's licenses being denied not only to illegal aliens as you intended, but to legal immigrants and to other persons legally present in the United States.

I and other Michigan Economic Development Corporation (MEDC) staff have been receiving frantic phone calls, e-mails, and letters from Michigan's international business community regarding this issue. Your opinion, issued with no advanced warning to the business community and with no opportunity for a hearing or public comment, has given the international business community the perception that Michigan is not open for business. For example, the government of Japan has formally expressed its concern that this issue may have a negative effect on the close and amicable relations between Japan and Michigan, particularly on the prospects of future investment.

I would like to share with you the magnitude of this problem as it relates to economic development in Michigan. According to the United States Bureau of Economic Analysis, in 2004, foreign companies invested over \$39 billion in Michigan. In 2007 alone, the Michigan Economic Development Corporation (MEDC) assisted over 30 foreign companies with expansions or locations in Michigan, with new investments of over \$300 million and creating over 3,000 new jobs. Think of the impact on our economy if as a result of your opinion these companies moved to other states that allow for any international staff legally in the United States to obtain a driver's license. No amount of tax breaks, start up funds, or other incentives will "seal a deal" with a foreign company if their international employees cannot function and if they feel unwelcome in Michigan.

In 2006, there were over 373,000 people who were in Michigan on visas, including automotive executives, managers, engineers, educators, students, and others who were here for short- and long-term work assignments or for education. In order to effectively conduct business, these individuals need to be able to legally drive in Michigan, buy or lease a car, and obtain automobile insurance, just as in other states and countries.

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# MICHIGAN STATE MEDICAL SOCIETY

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FAX 517/337-2490

February 7, 2008

MEMO TO: House Transportation Committee  
FROM: AppaRao Mukkumala, MD, President  
RE: Driver Licensing Requirements

On behalf of the more than 15,000 physicians of the Michigan State Medical Society, I am writing to support legislation to address the ability of the Secretary of State to license persons legally residing in Michigan. The current interpretation of the Attorney General opinion impairs the ability of individuals legally residing in Michigan from obtaining a drivers' license. This particularly affects medical students, medical residents, and physicians recruited from other countries.

Physicians trained in other countries, known as International Medical Graduates (IMG), fill a vital role in the delivery of health care services in the United States. The U.S. demand for physicians far exceeds the number trained domestically by our medical schools. Americans trained abroad help to narrow the gap, however, in order to fill all of the medical resident slots in the U.S. and in Michigan we rely on foreign born and trained physicians. Medical residencies may last as long as nine years, but are often at least three years.

Medical residents deliver a considerable amount of care at a tremendous value to their communities. The day-to-day delivery of health care relies heavily upon the services provided by medical residents. In some communities, IMG physicians comprise well over half of the medical residents at a facility. Additionally, as the country is facing an overall physician shortage, IMG physicians are helping to fill the demand.

From a competitive standpoint, the Attorney General opinion places Michigan at a disadvantage. Medical residents and other physicians from foreign countries will choose locations that are more hospitable. Prospective medical residents are already researching where they want to do their residencies. Electronic message boards already contain warnings about this restriction to prospective medical residents considering locating in Michigan. From a medical delivery standpoint, the Attorney General opinion will be problematic, as well. Physicians on call will not necessarily be able to find timely transportation to the hospital, thereby jeopardizing care to patients and creating new scheduling and coverage complexities for hospitals.

International Medical Graduates already undergo considerable scrutiny upon entering the country. Restricting the issue of a drivers' license not only creates a hardship on the individual but also deprives communities from attracting talented medical professionals to provide care. I would urge you to support and take swift action in making the changes necessary to allow persons legally residing in the U.S. eligible for Michigan issued drivers' licenses.





MICHIGAN HEALTH & HOSPITAL ASSOCIATION

*Advocating for hospitals and the patients they serve.*

TO: Members of the House Transportation Committee

FROM: Chris Mitchell, Manager, Government Relations

DATE: February 7, 2008

SUBJECT: House Bill 4505 – Driver's licenses regulations for legal residents  
MHA Position: **SUPPORT**

The Michigan Health & Hospital Association supports House Bill 4505, sponsored by Representative Joe Hune. This bill was introduced to address an unintended consequence of Opinion No. 7210 issued December 27, 2007 by Attorney General Mike Cox. In the opinion, it was concluded that only a permanent resident is eligible to receive a driver's license in Michigan. Those individuals in the state on a temporary basis, such as nonresidents with work visas, would not qualify for a state-issued driver's license. **House Bill 4505 takes into account the needs of those who are legally in Michigan but on a temporary basis, by proposing that they be allowed to receive a driver's license that expires in conjunction with their visa.**

**According to the Department of Homeland Security, over 373,000 temporary visa holders legally resided in Michigan in 2006.** These foreign nationals are lawfully present in the U.S. and provide a significant benefit to Michigan's economy. More importantly a number of these lawfully residing noncitizens, which includes physicians, nurses and health care technicians, are working in Michigan hospitals providing essential health care services to all citizens. It is paramount that these health care professionals be allowed to obtain a driver's license so that they are able to continue being an integral member of Michigan's health care system.

The MHA consistently supports legislation that allows hospitals to deliver the best quality of care to Michigan residents. Passage of this legislation allows Michigan hospitals to continue to recruit health care professionals with appropriate credentials to alleviate the burden from staffing shortages. **We urge you to support House Bill 4505 and permit all lawfully admitted residents to obtain a driver's license.**

Please contact Chris Mitchell ([cmitchell@mha.org](mailto:cmitchell@mha.org)) at (517) 703-8622 at the MHA if you have further questions on this issue.

SPENCER JOHNSON, PRESIDENT

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## **Concerns over State use of Radio Frequency Identification in Identity Documents**

Testimony regarding Michigan S.B. 962 -- S.B. 966  
Respectfully submitted to the Michigan House Transportation Committee  
by Dr. Katherine Albrecht, February 7, 2008

The Senate Transportation Committee looks today at two groups of bills that could incorporate the use of Radio Frequency Identification (RFID) into the drivers licenses of Michigan's citizens. This issue should be considered only after long and thoughtful deliberation, as the consequences of incorporating RFID into a government document are substantial. Make no mistake, this is not a minor policy point in the bills you have before you.

For committee members who are not familiar with RFID, it is a wireless tracking technology that uses tiny computer chips to identify items from a distance, and for such reasons is commonly referred to as a "spychip". Similar to a FM radio wave, they can be read through wallets, purses, briefcases, and clothes, and even through most walls, ceilings, and floors.

RFID chip and antenna combinations, called "tags," typically range from the size of postage stamps to the size of pagers. Some can be as small as the period at the end of this sentence. RFID tags without an independent power source, called "passive" tags, can transmit information from a couple of inches away to up to 20 feet, with technology advancing to increase this range at a fevered pitch. "Active" tags with internal batteries can transmit information up to a mile or more. Both can be used as relays with multiple readers, GPS, or computers to create large zones where the tags can be read, similar to the WI-FI networks we use with our laptops.

While originally used to track inventory, 78% of surveyed consumers have serious concerns with the obvious privacy issues associated with RFID, and for good reason. When embedded into identity documents, they become a tracking device for people and are often explicitly designed to be read without first obtaining the consent of the holder.

RFID technology first became used in identification documents in the private sector, usually associated linking an ID card with a door "key" to gain access to offices and elevators. Such cards have been shown to be handy and efficient, but not always secure. Indeed, numerous cards have been "cloned" by intercepting the wireless transmission and then used in a duplicate chip, effectively copying this virtual key.

This is a concern that can be mitigated by technology, but never fully addressed. By its very nature, all else being equal, a wireless device is inherently less secure. Adding to that concern is the fact that an unencrypted “passive” tag does not use its own energy, and indiscriminately sends information in response to the signal of almost any standard RFID reader. Unencrypted passive tags, including the ones being considered for Michigan’s identity documents, will most certainly broadcast to most any reader that asks.

With the two new drivers license schemes you are weighing today, one is purposefully designed to have RFID in it, and the other could likely have it in the future.

**1) Under dual purpose license proposals that merge driver’s licenses with passports, DHS is asking states to include RFID chips into their driver’s licenses to create a new breed of identity documents known as EDLs.**

This is due in part to the efforts of the United Nations International Civil Aviation Organization, which sets RFID standards for passports throughout the world, and the desire on the part of the Department of Homeland Security to employ technologies that are being used in other countries in order to standardize and harmonize licenses and border technologies. While being embraced in some countries like China where such surveillance techniques are commonplace and accepted, such a mandate will be met with skepticism and distrust in the United States.

Based on my experience in this field I have concerns about the use of RFID in any identity document in a democratic and free society. But in the case of federal passports, the Department of State at least chose to use short range RFID technology and a control feature known as Basic Access Control (BAC), which first requires the passport to be physically held by a border crossing agent and scanned while in hand in order to “unlock” the RFID chip for reading. Even among RFID proponents, this is considered a minimum best practice. For EDLs, DHS is asking states to use RFID that has been designed to be read between 20-30 feet away, and is not employing BAC. Without BAC the chips do not need to be “unlocked” first, and use static identifiers that do not rotate with subsequent reads. Not changing the identifier means that this static number can be tracked, and once associated to a person, means in turn that the person can be tracked. This is simply unacceptable.

Regardless of the technology employed, using RFID in government identity documents is a poor policy decision because of the likely increase we will see in RFID chips, and the RFID readers that come with them, in the commercial market. RFID will greatly simplify the task of collecting consumer data – particularly if consumers can be automatically identified while walking in the door, and who have to present their identification as part of a sales transaction. This allows for their personal identification and static RFID number to become linked, destroying the anonymity of any such pointer system number.

This is not hypothetical. RFID-based consumer tracking products are already widely

available in the market, with more uses on the way. For example, IBM has developed a bank application called "Margaret" that would use RFID tags embedded in checkbooks, savings passbooks, and ATM cards to identify customers as they enter a bank lobby. According to IBM's description, a reader device would scan the tags and communicate the customer's bank balance to employees, allowing them to give preferential treatment to more valuable clients.

Texas Instruments is promoting an RFID-enabled loyalty card product that could be read right through a shopper's purse as she enters the store. Their website explains how "a consumer with a TI-RFid tag in their purse, pocket, or wallet can be detected by reader systems at doorways. Readout antennas can also be in counters, walls, and in floors." It also details how "the technology can tell retailers exactly who's in their store at any given moment, while offering full purchase histories for each shopper. In addition, stores will know what the customer bought at their last visit, and what they might need for accessories."

Clothing outfitters are also considering new services where they take and store a customer's measurements, and then place RFID readers in dressing rooms to help verify how well item-level RFID tagged clothing items fit. It is easy to see how in many areas that RFID readers will be so ubiquitous, and in place in so many locations, that an unencrypted RFID driver's license will be constantly being read as a person moves from place to place. If a person is paying by check or credit card and a cashier asks to see a license, any reader within 20-30 feet of the transaction will be able to associate that card number to the person.

Once associated, simply walking into many stores will be enough to create a record of who enters and leaves. The company known as Checkpoint Systems Inc. plans to upgrade its reader devices -- the anti-theft doorway portals currently installed in tens of thousands of retail locations -- to serve as RFID tag readers. Obviously, having RFID readers at building entrances capable of reading the identification numbers could create a fairly direct route to the surveillance scenarios outlined above once the identifier and individual are commercially linked.

This could happen piecemeal as consumers present their IDs to buy beer or cigarettes, or it could happen in one fell swoop if the DHS database that contains the information is breached or hacked. Considering that database hacks often occur without the knowledge that such a breach has occurred, and considering that consumers have no way of knowing when their card is being read, it is more than conceivable that such linkages will occur without people ever knowing it. Most states that are considering EDLs are putting no laws into place that would prohibit the use of these numbers for commercial purposes. Even if such laws were put into place, they would be extremely difficult to enforce since consumers would be unaware that their information was being wirelessly harvested, and would not be reporting such practices to the local authorities.

## **2) Under the REAL ID Act, RFID may be required by the federal government in the future.**

While the Department of Homeland Security is not requiring RFID in REAL ID at this time, DHS also purposefully chose NOT to expressly ban the use of RFID in future rulemakings as the privacy community had asked them to. This is of particular concern because DHS has made it clear in the past that it is interested in exploring this technology in conjunction with REAL ID. In fact, many people who object to REAL ID, myself included, feel that DHS purposefully chose not to include RFID at this time simply to help the program gain initial acceptance. The latest guidelines offered under REAL ID contain many references to the fact that once a state has come on board that DHS will be the sole and final determinant on future standards, rules, and regulations, including those dealing with technology. Specifically, it was noted that they would need no additional approval from Congress, and would only need to hold a public meeting and “consult” with the States.

Given the history of our federal government, which in the past has directed its agencies to find more uses for RFID, I feel strongly that a RFID requirement is likely to happen. In fact, the United States General Services Administration (GSA) stated in their document entitled B-7 Radio Frequency Identification that the heads of federal agencies are “encouraged to consider action that can be taken to advance the [RFID] industry by demonstrating the long-term intent of the agency to adopt RFID technological solutions”.

One need only look at how DHS is pushing RFID for its EDL program to see that RFID is likely on the horizon for REAL ID. Because once a state enrolls in REAL ID it leaves such future technological decisions solely in the hands of DHS or AAMVA, Michigan would have no future official vote in federal standards that would require the use of RFID, what kind, and with what control measures, for all of its driver's license holders.

Proponents of RFID are eager to discuss the various technological workarounds they can devise to mitigate the RFID associated risks I have discussed. As is the case with our wireless laptops, these security problems will be identified and subsequently “patched,” at least until the next breach is identified. As technology races in two directions, one to both circumvent the security, and another to increase it, there will be many opportunities for anxiety in the minds of license holders. This brings up the obvious question of whether such an endeavor is then even worth initiating in the first place. Is what is to be gained by the inclusion of RFID worth the threats of interception, cloning, and tracking? Considering that the inclusion of unencrypted wireless computer chips hurts the security of the card by making it remotely readable, any hypothetical security benefit achieved from including the chip would have to be significantly high. And even if computer chips were warranted, non-wireless “contact” chips could be used. Therefore, while pleasing to the bureaucracy of border agents and providing for harmonization with the technologies of other countries, this is an area where the United States, and Michigan, should recognize the uniqueness of the

liberty of its citizens and blaze a path of its own devising.

In conclusion, inserting RFID into government documents should not be taken lightly. Unlike private transactions in the free market, government identification, like a drivers license, is very close to a mandate on the public. While a citizen can always choose not to carry a driver's license, government then either forces people not to drive, or forces them to break the law by driving without a license. When the government creates such mandates it must therefore exercise cautions that it does not tie unwarranted additional risks to those requirements. Otherwise, government is creating laws that shifts risks from itself to its people, and if history is any judge it is usually the people who are left holding the bag if things go wrong.

Passing unsound policy, even when optional to citizens, is also undesirable as it puts the government in the role of enabling the public to damage itself. The government can not pass such laws and then claim to be held entirely harmless simply because a citizen chose to take advantage of a bad law that the government created and offered. This is especially the case when government picks a poor option among a range of different choices, some of which pose little or no additional risk whatsoever.

For that reason I encourage you strongly to weigh both the good and the bad in SB 962-966, and to reject them in favor of new bills that would seek to enhance the security of Michigan's drivers licenses without causing additional harm.

I thank you for your time and request that you enroll my written testimony into your committee's meeting minutes.



AMERICAN IMMIGRATION LAWYERS ASSOCIATION  
MICHIGAN CHAPTER

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January 25, 2008

Secretary Terri Lynn Land  
Michigan Department of State  
Lansing, MI 48918

**RE: Michigan Driver's Licenses for Foreign Nationals  
AG Opinion No. 7210**

Dear Secretary Lynn Land:

This letter is written to request that you reverse your decision to deny driver's licenses to persons who are not US citizens or have a permanent resident card, and include a broader class of foreign nationals in Michigan, consistent with Michigan law and federal immigration law. We strongly believe that your office misread the implications and challenges for businesses and lawfully present foreign nationals, in your office's attempt to implement the Michigan Attorney General's Opinion No. 7210 regarding illegal aliens and eligibility for Michigan driver's licenses.

I am writing this letter as the Michigan Chapter Chair for the American Immigration Lawyers Association ([www.aila.org](http://www.aila.org)). The American Immigration Lawyers Association (AILA) is the national association of over 10,000 attorneys and law professors who practice and teach immigration law. AILA Member attorneys represent tens of thousands of US families who have applied for permanent residence for their spouses, children, and other close relatives to lawfully enter and reside in the United States. AILA Members represent thousands of US businesses and industries who sponsor highly skilled foreign workers seeking to enter the United States in a temporary or --having proven the unavailability of US workers -- permanent basis. AILA Members also represent foreign students, entertainers, athletes, and asylum seekers, often on a pro bono basis. Founded in 1946, AILA is a nonpartisan, not-for-profit organization that provides its Members with continuing legal education, information, professional services, and expertise through its 36 chapters and over 50 national committees. AILA is an Affiliated Organization of the American Bar Association and is represented in the ABA House of Delegates. The Michigan Chapter has over 250 members throughout our state.

We believe that Michigan law, the complexity of US immigration law, and the large number of lawfully present foreign nationals in Michigan, require the Secretary of State to implement an expansive reading and interpretation of the Attorney General's opinion. Our state cannot afford to increase another layer of difficulty to doing business to persons who are not "illegal aliens", and accordingly many more foreign nationals in Michigan should be eligible for a Michigan driver's license. We assert that there is no industry in Michigan that is not impacted negatively by your new driver's license requirements.

## Our Concerns

### Homeland Security

The issues of border security and undocumented aliens have become a priority at the national and state levels of government. The US Attorney General stated in his opinion that, "Recent Developments in state and federal law, as well as the changing imperatives of national security since OAG No 6883 was issued, warrant a reexamination of this subject." In a report entitled HOMELAND SECURITY Federal Effort Are Helping to Alleviate Some Challenges Encountered by State and Local Information Centers, the U.S. Government Accountability Office (hereafter "GAO") began its review under the premise that "A breakdown in information sharing was a major factor contributing to the failure to prevent the attacks of September 11, 2001, according to the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission)." The GAO added that, "most states and some local governments have, largely on their own initiative, established fusion centers to address gaps in homeland security, terrorism, and law enforcement information sharing by the federal government to provide a conduit of this information sharing within the state."<sup>1</sup> Accordingly, the State of Michigan was, prior to your new requirements, assisting in the efforts to keep the US safe by maintaining a complete and comprehensive driver's license database.

### Businesses in Michigan

We are deeply concerned that, due to your decision to limit a driver's license to only persons who are US citizens or "lawfully admitted for permanent residence", your office is forcing US employers and foreign owned companies in Michigan to re-locate their operations outside of Michigan, as their lawfully present foreign national workforce population must drive while lawfully present in Michigan. With an ineffective public transportation system throughout the state of Michigan, we believe many employers, who may already be looking elsewhere to start, expand, or move their operations, now have a very good reason to locate outside of our state. This anti-business measure would seem to be at odds with the traditional Republican voting base.

According to the Department of Homeland Security, over 33 million new temporary visa holders ("nonimmigrant aliens") were admitted to the US in 2006. Michigan alone received over 373,000 of these new lawfully present noncitizens. These foreign nationals are lawfully present in the US and provide a significant benefit to Michigan's economy while they are here. For example, many of the automotive executives, managers, and key engineering talent come to Michigan for short term work assignments for Michigan and foreign owned companies. Every industry in Michigan is negatively impacted by your new driver's license requirements.

### Highway Safety

If the Secretary continues with her restrictive approach in interpreting the Attorney General's opinion, the state will collect fewer fees from driver's license applications. We strongly believe that unlicensed foreign nationals will continue to drive to work and around our state. Without the proper screening and testing, they will endanger our residents. They may also be more likely to flee accident scenes. Moreover, without a Michigan license, these foreign nationals will probably not be able to secure automobile insurance, which could have devastating consequences to Michigan's citizens and noncitizens alike.

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<sup>1</sup> GAO-08-35 p. 1 (October 2007).



Your interpretation of the Attorney General's definition also appears to remove the restriction on use of a foreign driver's license to drive in Michigan for those who are resident in the state for more than 30 days. If the AG's opinion is interpreted to deem only US citizens and aliens admitted for permanent residence to be "residents" for driver's license purposes, then others living and driving in the state for 30 days would not be deemed subject to this restriction. This would allow the use of foreign driver's licenses and render auto insurance requirements difficult or impossible to enforce for such drivers.

#### Statutory Construction

The legislature has spoken and elected to include many more persons in Michigan a driver's license, assuming they meet all other eligibility requirements. Accordingly, your office should interpret the Attorney General's opinion very strictly, and not commit what commentators are already calling "economic suicide" for our state.

#### Work Authorization

The Attorney General did mention a driver's license and its usefulness in securing work authorization in the US. It is worth noting that a driver's license is never the only evidence that a prospective employee can present to prove work authorization. The I-9 Employment Eligibility Verification form requires that an employer see, if a driver's license is presented to prove work authorization, an additional form of valid identification to work in the US in addition to the driver's license (like a social security number without a DHS restriction printed on the card). Federal law requires that an I-9 form be completed for every newly hired employee in the US. Making foreign nationals ineligible for a driver's license, unfortunately, will do nothing to address unlawfully present foreign nationals working for Michigan employers.

The Attorney General mentioned in his opinion that the Social Security Administration (SSA) has taken significant steps to limit fraud in their application and social security issuance process. By preventing foreign nationals who lack lawful status or valid work authorization from securing a social security number, SSA has taken the critical step in ensuring only authorized noncitizens can work in the US. Precluding noncitizens from securing a Michigan driver's license will not change federal work eligibility requirements, and will not address undocumented workers taking jobs from Michigan residents.

#### What Does the Attorney General's Opinion Actually Require?

We believe the Attorney General's opinion does not require that only aliens lawfully admitted for permanent residence (also called "green card holders") or US citizens are eligible for a Michigan driver's license, assuming they meet all other residency and testing requirements. We believe the Secretary must include many other groups of foreign nationals who are lawfully present in the classes of persons who are eligible for a Michigan Driver's license. The Attorney General's opinion did not use the "terms of art" under the Immigration and Nationality Act (INA) or its Regulations. The Attorney General specifically confirmed in his opinion that "Michigan law must be interpreted against the background of federal law when considering questions involving aliens". Accordingly, we believe that the Secretary should change her policy and utilize an appropriate level of flexibility in implementing the Attorney General's opinion.

The Attorney General titled the opinion "Permanent Residency Requirement of Driver's Licenses," and states in the summary that "A person who is not a lawful resident of the United

States cannot be a resident” for driver’s license purposes. The Attorney General only cites one section of the INA throughout his entire opinion, and that is the section that defines aliens “lawfully admitted for permanent residence” (8 USC 101(a)(20)). The Attorney General did cite several cases in his opinion, but these appear to be cited to confirm his authority to change Michigan’s procedures, rather than to confirm that he was limiting this rule to only include green card holders.

The Attorney General did not use the term “lawfully admitted for permanent residence” in either the title or the summary of his opinion. The Attorney General was free to do so, but did not. We are left to assume that he may have meant something different in his opinion.

The Attorney General did focus his opinion on illegal aliens. He stated in the body of his opinion that “The question then becomes whether an illegal alien may be legally considered a permanent resident of the state”. Note, the Attorney General finally referred to the INA five paragraphs later by citing the official definition of aliens lawfully admitted for permanent residence. In addition, he clearly states in Footnote 4 that “This opinion addresses only whether an illegal alien may obtain a driver’s license in Michigan under the specific provisions and definitions set forth in the Michigan Vehicle Code”.

The Attorney General also did not defer to the Immigration Act’s definition of “residence” or “permanent” for Michigan’s driver’s licenses rules (cited at 8 USCS 1101(a)33, and (31) respectively).

It is worth noting that no other state in the US requires that only US citizens or aliens lawfully admitted for permanent residence are eligible for a state driver’s license. We would be the first state to take that restrictive position. There is nothing in the text of the opinion that confirms the Attorney General was taking that bold step.

For these reasons we assert that the Secretary must interpret the Attorney General’s Opinion No. 7210 to include more persons than just those who are US citizens or aliens lawfully admitted for permanent residence.

#### **Who Should Be Allowed to Receive a Michigan Driver’s License?**

The definition of who is an “illegal alien” is not an easy determination, even for those of us who practice in the field. The term “illegal alien” is not defined in the Immigration and Nationality Act (it is referred to in a few sections but is never defined, which is further demonstrated by the Attorney General citing a dictionary definition for illegal alien). We assert that all noncitizens who are able to prove they are in the US and not “illegal”, who meet all other Michigan defined domicile and examination eligibility requirements, should be eligible for a Michigan driver’s license, and should include:

1. All noncitizens who have been issued a resident alien card or stamp in an unexpired foreign passport, form I-551 card or stamp, by the US Citizenship and Immigration Services (USCIS).
2. All noncitizens in the US in nonimmigrant status as defined under 8 USCS 1101(a)(15), and as evidenced by a valid I-94 card. US immigration law allows for temporarily admitted noncitizens, referred to as “nonimmigrant aliens”, to work or be present in the US under a wide range of categories. Most of these classifications can be extended, for many years. Many noncitizens will hold this status for several years, if they are applying to secure a US green card, until the green card can be approved.

3. All noncitizens who have an application pending for an extension of their nonimmigrant status, as evidenced by an I-797 receipt notice issued by a USCIS Regional Office. Please note, these noncitizens are eligible to continue working in the US for up to 240 days while the extension process is pending (8 CFR 274a.12(b)(20)). USCIS frequently experiences significant processing delays.
4. All persons who can evidence their ability to work in the US with an unexpired Employment Authorization Document issued by the USCIS (form I-766, I-688, I-688A, or I-688B).
5. All noncitizens who have been granted asylee or refugee status in the US.
6. All noncitizens who have applied for asylee or refugee status in the US.
7. All persons eligible to work in the US, as listed on the I-9 Employment Eligibility Verification Form, page 2.
8. Any other noncitizens not defined in the above paragraphs, but are listed as eligible for employment in the US under 8 CFR 274a.12.
9. All persons with a social security number.
10. All persons not "unlawfully present" in the US pursuant to 8 USCS 212(a)(9)(B), and as defined in the US Department of Justice Memorandum dated June 12, 2002, interpreting unlawful presence, in the absence of USCIS regulations (see the attached). These include: persons who have been granted voluntary departure, withholding or suspension of deportation or cancellation of removal, temporary protected status or deferred enforced departure; those persons subject to withholding or deferral of removal and deferred action; and those persons with properly filed applications based on Cuban-Haitian entrant, legalization and special agricultural worker applications for lawful temporary residence which are pending through an administrative appeal, and Adjustment of Status (I-485).

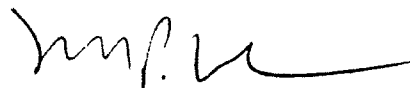
#### **Deferral to the Federal Government's Classifications**

Finally, we strongly assert that any weaknesses in the US border security, admission process to the US, or employment verification process should be dealt with on a federal level, and not through draconian changes at the state or local levels.

#### **Conclusion**

For these reasons, we request that you reverse your decision to deny driver's licenses to persons who are not US citizens or have a permanent resident card, and include a broader class of foreign nationals in Michigan, consistent with Michigan law and federal immigration law.

Very truly yours,



Michael P. Nowlan



U.S. Department of Justice  
Immigration and Naturalization Service

Office of the Executive Associate Commissioner

HQADN 70/21.1.24-P  
425 I Street NW  
Washington, DC 20536

JUN 12 2002

MEMORANDUM FOR REGIONAL DIRECTORS  
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER,  
IMMIGRATION SERVICES  
GENERAL COUNSEL

FROM: Johnny N. Williams  
Executive Associate Commissioner  
Office of Field Operations

SUBJECT: Unlawful Presence

**Purpose**

This memorandum addresses issues relating to the 3- and 10-year bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Immigration and Nationality Act (Act) and the decision to designate as a period of stay authorized by the Attorney General the entire period during which an alien has been granted deferred action by the Immigration and Naturalization Service (INS). This period of stay authorized by the Attorney General covers only the period during which deferred action is in effect. It does not eliminate any unlawful presence that accrued before the alien was granted deferred action.

The decision to designate deferred action as a period of stay authorized by the Attorney General does not in any way alter the nature of deferred action or the standards for granting it. See Chapter 17.7 of the INS's Detention and Deportation Manual. Note that Chapter 17.7(a) will be amended in the second paragraph to be consistent with the policy guidance provided herein.

Any adjustment of status application that is pending denial or has been denied because of unlawful presence that the alien accrued while in deferred action status may be re-evaluated in light of this policy memorandum.

This memorandum also provides clarification on the period of stay authorized by the Attorney General with respect to applicants for temporary protected status (TPS) and deferred enforced departure (DED). These policies and procedures are effective immediately and will be included in the Adjudicator's Field Manual (AFM) in the next release of INSERTS.

For purposes of section 212(a)(9)(B)(ii) of the Act, and for no other purpose or benefit under the Act, the INS has designated the following as periods of stay authorized by the Attorney General:

- Current grants of voluntary departure;
- Current grants of deferred action in effect on or after April 1, 1997;
- Refugee status;
- Asylee status;
- Grants of withholding or deferral of removal under the United Nations Convention Against Torture;
- Legalization and special agricultural worker applications for lawful temporary residence which are pending through an administrative appeal;
- Grants of withholding or suspension of deportation, or cancellation of removal;
- Properly filed applications for temporary and permanent residence by Cuban-Haitian entrants under section 202(b) of Pub. L. 99-603 through administrative appeal;
- Current grants of TPS and DED. For TPS, the period of stay authorized by the Attorney General begins on the date a prima facie TPS application is filed with the Service, if that application is ultimately approved. If the TPS application is denied, or if the TPS application does not establish the alien's prima facie eligibility, unlawful presence begins accruing on the date the previous stay

authorized by the Attorney General expired. For DED, the period of stay authorized by the Attorney General takes effect beginning on the date specified in the Executive Order. When TPS or DED are no longer in effect, the accrual of unlawful presence resumes;

Properly filed, affirmative applications for adjustment of status under section 245 of the Act [including section 245(i)], and properly filed, affirmative registry applications under section 249 of the Act. The period of stay authorized by the Attorney General continues if the application is denied and renewed in proceedings, through review by the Board of Immigration Appeals. The alien must, however, be eligible to renew the denied application in proceedings and have a legal basis for renewing that application; and

Certain pending applications for extension of stay or change of status.

Please direct any further questions relating to operational issues, through supervisory channels, to Kathy Dominguez in Headquarters Office of Field Services Operations at 202-616-1050 or Danielle Lee in Headquarters Office of Service Center Operations at 202-305-8010. Direct questions relating to policy issues, through supervisory channels, to Sophia Cox in Headquarters Office of Adjudications at 202-514-4754.

Memorandum for Regional Directors, et. al  
Subject: Unlawful Presence

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Distribution List: R. Sloan; HQPDI; Please incorporate into next release of INSERTS.

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T. Cook; HQADN





January 28, 2008

**VIA E-MAIL AND GENERAL CIRCULATION**

To Whom It May Concern:

My name is Reginald Pacis. I am an attorney and shareholder practicing in Butzel Long's Detroit office. I specialize in U.S. immigration law and have been practicing for over 10 years. I am a member of the American Bar Association, the American Immigration Lawyers Association (hereafter "AILA") and served two consecutive terms from 2003 to 2004 and 2004 to 2005 as Chairperson of the Michigan Chapter of AILA. I was also a member of the AILA National Board of Governors for those terms. I have been a speaker on immigration topics at many business, Hispanic, and Filipino presentations. I am a frequent presenter in the Annual Butzel Long Immigration Seminar. I was a presenter and member of the faculty for the 2004 AILA National Conference in Philadelphia, Pennsylvania and published in the 2004 AILA National Conference materials. I was a presenter and discussion leader at the 2006 AILA National Conference in San Antonio, Texas. I am presently serving as a member of the AILA National committee responsible for liaison with the U.S. Customs and Border Protection, a division of the U.S. Department of Homeland Security presiding over inspections and security of the U.S. border. I concurrently serve on the Michigan AILA Advocacy Committee.

I am writing to provide my comments, from an immigration law perspective, to the current version of Senate Bill No. 962. Senate Bill No. 963 contains language similar regarding the regulation of Michigan Identity Cards to Senate Bill No. 962. Because I share similar concerns regarding these two Bills, I will limit my comments to Senate Bill No. 962 (hereafter "the Bill"). As an immigration practitioner who represents primarily business clients with immigration issues, I am concerned about the current version of the Bill.

**Who Should Be Eligible For a Michigan Driver's License?**

A recent trend has developed with respect to revisiting the laws and application of laws regarding the issuance of driver's licenses to "illegal aliens" in Michigan. The definition of who is an "illegal alien" is not an easy determination, even for those of us who practice in the field. The term "illegal alien" is not defined in the Immigration and Nationality Act (it is referred to in a few sections but is never defined, which is further demonstrated by the Attorney General citing a dictionary definition for illegal alien).<sup>1</sup> All noncitizens who are able to prove they are lawfully present in the U.S. and not "illegal", who meet all other Michigan defined domicile and

<sup>1</sup> OAG 7210.

January 28, 2008

## Other Concerns

### Homeland Security

The issues of border security and undocumented aliens have become a priority at the national and state levels of government. The Michigan Attorney General has stated that, "Recent Developments in state and federal law, as well as the changing imperatives of national security since OAG No 6883 was issued, warrant a reexamination of this subject."<sup>2</sup> In a report entitled HOMELAND SECURITY Federal Effort Are Helping to Alleviate Some Challenges Encountered by State and Local Information Centers, the U.S. Government Accountability Office (hereafter "GAO") began its review under the premise that "A breakdown in information sharing was a major factor contributing to the failure to prevent the attacks of September 11, 2001, according to the National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission)." The GAO added that, "most states and some local governments have, largely on their own initiative, established fusion centers to address gaps in homeland security, terrorism, and law enforcement information sharing by the federal government to provide a conduit of this information sharing within the state."<sup>3</sup> Accordingly, the State of Michigan is assisting in the efforts to keep the U.S. safe by maintaining a complete and comprehensive driver's license database.

### Businesses in Michigan

I am deeply concerned that, due to the decision to limit a driver's license to only persons listed in the current version of this Bill, the State of Michigan is forcing U.S. employers and foreign owned companies in Michigan to re-locate their operations outside of Michigan, as their lawfully present foreign national workforce population must drive while lawfully present in Michigan. With an ineffective public transportation system throughout the state of Michigan, many employers, who may already be looking elsewhere to start, expand, or move their operations, now have a very good reason to locate outside of our State.

According to the Department of Homeland Security, over 33 million new temporary visa holders ("nonimmigrant aliens") were admitted to the U.S. in 2006. Michigan alone received over 373,000 of these new lawfully present noncitizens. These foreign nationals are lawfully present in the U.S. and provide a significant benefit to Michigan's economy while they are here. For example, many of the automotive executives, managers, and key engineering talent come to Michigan for short-term work assignments for Michigan and foreign owned companies.

### Highway Safety

It is true that aliens with licenses with foreign countries may drive temporarily in Michigan.<sup>3</sup> There are a number of countries listed whose foreign driver's licenses are recognized

<sup>2</sup> Id. at p. 2.

<sup>3</sup> GAO-08-35 p. 1 (October 2007).

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ownership with which the U.S. has a treaty of trade and investment of that company's foreign nationality), **F-1 Students** (not foreign exchange students), **H-1B** (professionals such as engineers, computer programmers, accountants, professors, etc.), **H-1C** (nurses), **H-3** (trainees from foreign countries), **K-1** (fiancées), **K-2** (immediate family members of fiancées), **K-3s** (certain spouses of U.S. citizens), **L-1A** (corporate managers and executives), **L-1B** (specialized knowledge workers), **O-1** (outstanding individuals with exemplary credentials such as acclaimed scientists), **P-1** (international performers and athletes- such as Detroit Red Wing and Piston players), **R-1** (religious workers), and **TN** (professionals such as engineers, computer programmers, accountants, professors, etc. who are nationals of Canada or Mexico).

- All noncitizens who have an application pending for an extension of their nonimmigrant status, as evidenced by an I-797 receipt notice issued by a USCIS Regional Office. Please note these noncitizens are eligible to continue working in the U.S. for up to 240 days while the extension process is pending (8 CFR 274a.12 (b) (20)). USCIS frequently experiences significant processing delays.
- All persons who can evidence their ability to work in the U.S. with an unexpired Employment Authorization Document issued by the USCIS (form I-766, I-688, I-688A, or I-688B).
- All noncitizens who have been granted asylee or refugee status in the U.S.
- All noncitizens who have applied for and are seeking asylee or refugee status in the U.S.
- Any other noncitizens not defined in the above paragraphs, but are listed as eligible for employment in the U.S. under 8 CFR 274a.12.
- All noncitizens with a pending removal (deportation) case before an immigration judge before an appellate agency (such as the Board of Immigration Appeals) or court until the status of their ability to remain or leave the U.S. is determined.
- All noncitizens not "unlawfully present" in the U.S. pursuant to 8 USCS 212(a)(9)(B), and as defined in the U.S. Department of Justice Memorandum dated June 12, 2002, interpreting unlawful presence, in the absence of USCIS regulations (see the attached). These include: persons who have been granted voluntary departure, withholding or suspension of deportation or cancellation of removal, temporary protected status or deferred enforced departure; those persons subject to withholding or deferral of removal and deferred action; and those persons with properly filed applications based on Cuban-Haitian entrant, legalization and special agricultural worker applications for lawful temporary residence which are pending through an administrative appeal, and Adjustment of Status (I-485).

#### Evidence of Immigration Status

The Bill attempts to provide a comprehensive list of potential immigration classifications to include certain work authorized and lawfully present aliens by asking foreign national driver's license applicants to provide documentary evidence of the listed items.<sup>6</sup> This list however fails

<sup>6</sup> Pages 30-31 of the Bill.

January 28, 2008

Number.<sup>8</sup> The reliance on the SAVE system will negatively impact expeditious processing for Driver's license applications for lawfully present foreign nationals and U.S. citizens. This reliance adds yet another administrative hurdle in quick and efficient processing of the Driver's license.

The Bill also requires that applicants for Driver's licenses provide their Social Security Number on their Driver's license application.<sup>9</sup> However, **the Social Security Administration does not issue Social Security Numbers to noncitizens for the purpose of obtaining a Driver's license.**<sup>10</sup> So the family members of lawfully present work authorized foreign nationals would be unable to obtain a Driver's license under the Bill.

### **Burden on the Secretary of State**

The Bill sets up a separate Driver's license document for those persons listed within the proposal.<sup>11</sup> It requires the Secretary of State to issue Driver's licenses to lawful present foreign nationals in the U.S. for a prolonged stay for a limited period. These licenses will either expire on the date of expiration of the authorized stay of the foreign national, or in one year from the date of issuance if no definitive end date of the person's authorized stay may be determined. The complexity of U.S. immigration law will make it difficult for the Secretary of State to implement clear training rules and guidelines for their offices around Michigan. U.S. immigration law allows for temporarily admitted noncitizens, referred to as "nonimmigrant aliens", to work or be present in the U.S. under a wide range of categories, including A, B, E, F, G, H, J, K, L, M, O, P, Q, R, S, T, and U status, just to name some of the more common categories. **Several of these classifications can be valid, and extended, for many years requiring multiple visits by lawful present foreign nationals to make multiple trips to the Secretary of State's office to renew their Driver's licenses.**

Many noncitizens will hold this status until a green card can be approved. According to the Department of Homeland Security, over 33 million new nonimmigrant aliens were admitted to the U.S. in 2006. Michigan alone received over 373,000 of these new noncitizens. **The complexity of these immigration rules, delays in processing of extensions or changes of status by federal immigration agencies, as well as issues for spouses and dependents of these noncitizens, will put significant strains on the Secretary of State's resources.** We hope care will be taken by the Legislature Secretary of State in crafting legislation and implementation to ensure that, at the very least, lawfully present noncitizens are not inadvertently swept up in this issue.

<sup>8</sup> See [http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std\\_adp.php?p\\_faqid=414&p\\_created=973093730&p\\_sid=CPIIdRWi&p\\_accessibility=0&p\\_redirect=&p\\_lva=1516&p\\_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbQ9MTcsMTcmF9wcm9kc0mcF9jYXRzPTE2LDMwJnBfcHY9JnBfY3Y9Mi4zMCZwX3NIYXJjaF90cXBIPWFuc3dlcnMu](http://ssa-custhelp.ssa.gov/cgi-bin/ssa.cfg/php/enduser/std_adp.php?p_faqid=414&p_created=973093730&p_sid=CPIIdRWi&p_accessibility=0&p_redirect=&p_lva=1516&p_sp=cF9zcmNoPTEmcF9zb3J0X2J5PSZwX2dyaWRzb3J0PSZwX3Jvd19jbQ9MTcsMTcmF9wcm9kc0mcF9jYXRzPTE2LDMwJnBfcHY9JnBfY3Y9Mi4zMCZwX3NIYXJjaF90cXBIPWFuc3dlcnMu)

<sup>9</sup> Page 13 of the Bill.

<sup>10</sup> See note 7.

<sup>11</sup> Lines 15-19 of Page 31 of the Bill.

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## Upgrading Michigan's Driver's License & Personal Identification Card

Michigan Department of State  
February 7, 2008

1

## Upgrading Michigan's Driver's License & Personal Identification Card

- Recognizes that Michigan must keep pace with changing world. (*Post 9/11*)
- Ensures integrity of Michigan driver's licenses/state ID cards and helps to secure America's borders without hampering commerce.
- Adds security features. (*harder to counterfeit*)
- Offers customers a convenient option based on their travel needs.

2

## Two Packages of Bills:

### 1) Upgraded "Standard" Driver's License (DL) and Personal Identification Card (PID):

- HB 5518 (Rep. Pavlov) / SB 962 (Sen. Sanborn) – Driver's License
- HB 5519 (Rep. Nofs) / SB 963 (Sen. Stamas) – Personal Identification Card

### 2) Optional "Enhanced" Driver's License and Personal Identification Card:

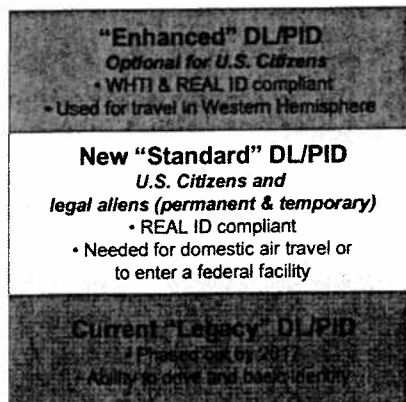
- HB 5535 (Rep. Tobocman) / SB 964 (Sen. Gilbert) – Driver's License
- HB 5536 (Rep. Clemente) / SB 965 (Sen. Pappageorge) – Personal Identification Card
- HB 5537 (Rep. Huizenga) / SB 966 (Sen. Brown) – Personal Identification Card

3

## Security Level Building Blocks

The more secure licenses also function as the licenses below them on the chart. *For example, a Western Hemisphere Travel Initiative (WHTI) compliant license is by definition also REAL ID compliant.*

Most Secure



Least Secure

4

## Benefits of Proposal

Michigan would issue two levels of DL/PIDs:  
New "Standard" (REAL ID compliant) &  
"Enhanced" (WHTI compliant).

- All Michigan DL/PIDs could be used for federal purposes (boarding aircraft, entering a federal facility, etc.).
- Security of Michigan's current DL/PIDs would be improved.
- Illegal aliens would no longer be issued DL/PIDs.
- Legal aliens would be eligible for new "Standard" card.
- Michigan would offer a DL/PID that could be used to cross the border to Canada.
- RFID technology would only be in optional WHTI cards.

5

## Current Cards (4):



6

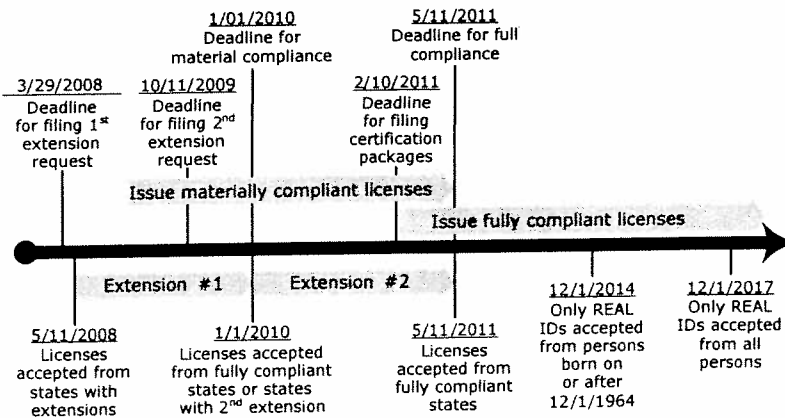
## Cards under Legislative Proposals (8):



7

## REAL ID Implementation Timeline

### STATE COMPLIANCE MILESTONES



### OFFICIAL PURPOSE MILESTONES

8



## The upgraded "Standard" DL/PID bills:

- Codify the legal presence requirement allowed by the recent Attorney General opinion while allowing temporary legal residents to obtain a DL/PID. Provide relief to hundreds of workers and students who are in the United States legally and contributing to Michigan's economy.
- When fully implemented, tie the expiration date of a DL/PID to the expiration date of a foreign applicant's visa.
- Require the Department to verify - with the appropriate agency - the validity and completeness of documents presented by the applicant in order to obtain a DL/PID.
- Provide for scanning and storing of source documents presented at application and classify them as "highly restricted."

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## The upgraded "Standard" DL/PID bills:

(continued)

- Require additional data elements be added to front of the card and on 2D barcode on the back.
- Make it a felony to collect and store information from the barcode.
- Restrict the disclosure of source documents, facial images and data to law enforcement and other authorized governmental purposes.
- Require physical security features to prevent fraud and tampering.
- Prevent DL/PID card holders in Michigan from having cards in other states.

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## The upgraded "Standard" DL/PID bills:

(continued)

- Subject all persons authorized to issue, manufacture or produce cards to appropriate security clearance requirements.
- Require the department to institute fraudulent document recognition training programs for staff.
- Require the physical security of locations where cards are produced and source documents are maintained.
- Allow for a fee of not more than \$35 for an original operator or minor's restricted license, or not more than \$45 for an original chauffeur's license to cover the additional costs of these cards.

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## The upgraded "Standard" DL/PID bills do NOT:

- **Do not create a national I.D. card.**  
*"...DHS does not intend that REAL ID documents become de facto national ID and does not support creation of a national ID."<sup>1</sup>  
"...the final rule does not require that the REAL ID driver's license or identification card number or design be unique nationally..."<sup>1</sup>*
- **Do not create a national database of information regarding Michigan or any other state's drivers.**  
*"...DHS does not intend to own or operate a database on all driver's license and identification card holders."<sup>2</sup>*
- **Do not require a radio frequency identification (RFID) chip.**  
*Federal rule (37.19) and proposed state law change both specify 2D bar code as the required machine readable technology.*

<sup>1</sup> U.S. Department of Homeland Security, "Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes," *Federal Register*, vol. 73, no. 19, 29 January 2008, p. 5290.

<sup>2</sup> *Ibid.*, p. 5291.

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## The upgraded "Standard" DL/PID bills do NOT: *(continued)*

- Do not require Department employees to become experts in immigration law in order to issue a card.
- Do not require the Department to contact U.S. Dept. of Homeland Security if an individual is denied a license due to their legal status.
- Do not allow people in other states to access personal information.
- Do not eliminate the convenient option of renewing a license by mail.<sup>3</sup>
- Do not require you to come into the office to change your address.<sup>3</sup>

<sup>3</sup> U.S. Department of Homeland Security, "Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes," *Federal Register*, vol. 73, no. 19, 29 January 2008, p. 5286.

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## The "Enhanced" DL/PID bills:

- Create an "enhanced" DL/PID for use in entering the U.S. at land and sea ports.
- "Enhanced" cards available only to U.S. citizens.
- "Enhanced" cards are an entirely optional choice for citizens.
- Cards have all the benefits of a standard card, plus WHTI use.
- Allow State of Michigan to enter into an agreement with the federal government to allow the use of our "enhanced" license at the border.

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## The “Enhanced” DL/PID bills:

*(continued)*

- Allow card to contain “facilitative technology” required by the federal government. Individuals would sign saying they understand what they are receiving.
- Allow for a fee of not more than \$50 for the “enhanced” license.

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## What Will This Cost?

- Upfront versus ongoing costs.
- Before REAL ID or WHTI, the Legislature appropriated funds to upgrade Department of State technology. (BAM project)
- When REAL ID became law, known requirements were incorporated into MDOS’ business plan for developing the new system. (Example: Photo up front, imaging documents, verify, SSN etc.)
- Applied for available grant money. So far, approximately \$310,000 has been approved for Michigan.

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## What Will This Cost? *(continued)*

- Ongoing costs can be covered by proposed increase in DL/PID fees.
- Ongoing costs include: more secure cards, document verification checks and employee background checks.
- No intention of asking for additional appropriation for implementation other than the increased fees.
- In the final rules, DHS took cost concerns into consideration and attempted to mitigate them.

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## Common Q & A

**Q: Why should Michigan comply with the REAL ID Act?**

**A:** *If we don't, all Michigan residents would be required to have a passport to board even domestic airplanes or enter federal buildings. This could have a negative impact on Michigan's economy. Many of the changes we are proposing for DLs and PIDs are good policy regardless of REAL ID.*

**Q: Aren't they going to repeal the REAL ID Act anyway? Why not wait?**

**A:** *It is not sound management to base decisions on what Congress may do. Like it or not, Real ID is current federal law. It would be irresponsible not to properly prepare for it. If Congress fails to repeal REAL ID with no time to implement it, thousands of Michigan residents will discover their current driver's licenses are no longer adequate to board planes or enter federal buildings.*

**Q: Why not just "fix" the temporary worker issue now and deal with REAL ID later?**

**A:** *The introduction of this comprehensive package of bills addresses immediate concerns such as strengthening the security of our driver's license and providing an option for temporary workers. It also allows us adequate time to properly prepare for other key issues. For example, our current DL/PID production contract is due to expire and we need to know what to include into the new contract. It is also hard to apply for available grant money when the state hasn't even indicated that we are working toward a compliant license.*

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## Common Q & A (continued)

Q: Isn't this an "unfunded mandate"?

A: *Technically, it isn't a mandate as states can choose not to comply with the REAL ID Act. However, the consequence is that those states' DLs and PIDs would not get you on a domestic aircraft or into a federal building. Federal grant money has been made available. DHS is making approximately \$360 million available through grant programs to assist states with REAL ID implementation.*

Q: Are individuals here on specific nonimmigrant status able to obtain a "standard" DL/PID even though that particular status is not listed in the bills?

A: *All applicants in the U.S. legally fall under Sec. 310F (1)(b) of SB 962 if they were "admitted for permanent or temporary residence in the United States." We chose to write this broadly instead of listing specific documents in case federal status classifications are added, subtracted or changed in the future. This language was taken from the REAL ID act. The final federal regulation provides that any document verifiable by the federal government is acceptable for proving lawful status and that's what these bills provide.*

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## Common Q & A (continued)

Q: Why does the WHTI card have an RFID chip?

A: *The WHTI card is **completely optional**. No one will have an RFID chip in their DL/PID that doesn't want one. Further, RFID technology in these cards is required by U.S. Department of Homeland Security in order for our cards to be accepted by DHS for border crossing. The reality is if you want to leave the country then you will be required to carry a document with RFID technology. All new passports have RFID chips and the WHTI license will be required to have them too.*

Q: What information is on the RFID chip?

A: *The chip **ONLY** contains a unique identifier number. A law enforcement agency would need secure access to our database to link this number with any personal information. This allows for faster approval at borders as opposed to manual review of passports.*

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MICHIGAN HOUSE OF REPRESENTATIVES

**PAUL E. OPSOMMER**

STATE REPRESENTATIVE

February 7, 2008

**To: Honorable Hoon-Yung Hopgood, Chair, House Transportation Committee  
Honorable House Transportation Committee Members**

**Re: Bills before the House Transportation Committee Hearing, February 7, 2008**

Dear Colleagues:

Making our driver's licenses more secure, and ensuring the free flow of goods into Michigan, are two very important issues. I would like to thank all of the bill sponsors for bringing these to the forefront, as well as to thank Attorney General Cox and Representative Rick Jones for their roles in having already completed much of the work that needed to be done.

An examination of the finer aspects is not over, however. Not only can the devil be in the details, but we also have to be on guard against unintended consequences. In this regard I have two such major concerns. My first is

- 1) **The push by the Department of Homeland Security to put wireless Radio Frequency Identity computer chips into state level identity documents.** Right now, DHS is pushing for implementation of what it calls "facilitative technology" into state identity documents. If you are unsure of

what “facilitative technology” means, don’t bother grabbing a dictionary. This is Washington-speak for unencrypted **long range** RFID. This is different than the type of short range RFID that some of us voluntarily have in credit cards, work badges, or traditional passports, which are designed to broadcast at a range of 2-3 inches. The long range RFID that DHS wants to put into our cards is designed to be read at a range of 20-30 feet, is unencrypted, and does not use what is in essence a technological “on/off” switch for the RFID known as Basic Access Control. I have spent months trying to allow Michigan to use short range RFID with Basic Access Control in any dual purpose license we may choose to create. If it is considered as the safer and the better choice for federal passports, there is no reason why Michigan should be willing to settle for inferior RFID, or be forced into putting RFID into our licenses at all in an effort to solve border crossing problems caused by the very federal government who is now attempting to ramrod RFID. The fact that DHS is requiring RFID in documents based largely on the recommendations of the United Nation’s agency known as the International Civil Aviation Organization is troubling, for we are now seeing a trickle down not only from a federal level onto state’s drivers licenses, but from international levels as well. If the federal government simply lowered the price of traditional passports from \$100 to \$50, it would relatively easy



to keep state level and federal level documents separate and not unintentionally create a national ID card.

My second concern is

- 2) **The sharing of Michigan driver's license data with foreign countries, in this case, chiefly Mexico and Canada.** Some of the bills before you today call for Michigan to enter into a compact known as the Driver's License Agreement (DLA). This is not a decision to make lightly. The DLA was created by the American Association of Motor Vehicle Administrators, who despite its name has Canadian and North American members. Part of the DLA would require states to share its driver's license data with Canada and Mexico. This was considered highly controversial in Congress, and was in fact stripped out of the original version of REAL ID because of a desire to keep sovereign control over our documents. It is important to note the joining the DLA is not required under REAL ID, and should be considered as a separate issue. Whether it is the DLA or any international compact or agreement required for the creation of a dual purpose license, I feel it is incumbent upon the Michigan legislature to know the full details of such data sharing before agreeing to any such arrangement. We have to deal with corruption in our own country, I do not also want to have to worry about a

corrupt government official in Mexico or Canada having the same access to our databases as someone in Indiana or Ohio.

In closing, there is no reason why an equally secure license can not be created that does not require inferior RFID or that represents a blank check to the sharing of Michigan driver's license data with foreign countries.

Respectfully,

Paul Opsommer's Office  
State Representative, 93<sup>rd</sup> District